



Rep. Sara Feigenholtz

**Filed: 3/25/2016**

09900HB5009ham001

LRB099 18341 MJP 46195 a

1 AMENDMENT TO HOUSE BILL 5009

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5009 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Act on the Aging is amended by  
5 changing Section 4.04 as follows:

6 (20 ILCS 105/4.04) (from Ch. 23, par. 6104.04)

7 Sec. 4.04. Long Term Care Ombudsman Program. The purpose of  
8 the Long Term Care Ombudsman Program is to ensure that older  
9 persons and persons with disabilities receive quality  
10 services. This is accomplished by providing advocacy services  
11 for residents of long term care facilities and participants  
12 receiving home care and community-based care. Managed care is  
13 increasingly becoming the vehicle for delivering health and  
14 long-term services and supports to seniors and persons with  
15 disabilities, including dual eligible participants. The  
16 additional ombudsman authority will allow advocacy services to

1 be provided to Illinois participants for the first time and  
2 will produce a cost savings for the State of Illinois by  
3 supporting the rebalancing efforts of the Patient Protection  
4 and Affordable Care Act.

5 (a) Long Term Care Ombudsman Program. The Department shall  
6 establish a Long Term Care Ombudsman Program, through the  
7 Office of State Long Term Care Ombudsman ("the Office"), in  
8 accordance with the provisions of the Older Americans Act of  
9 1965, as now or hereafter amended. The Long Term Care Ombudsman  
10 Program is authorized, subject to sufficient appropriations,  
11 to advocate on behalf of older persons and persons with  
12 disabilities residing in their own homes or community-based  
13 settings, relating to matters which may adversely affect the  
14 health, safety, welfare, or rights of such individuals.

15 (b) Definitions. As used in this Section, unless the  
16 context requires otherwise:

17 (1) "Access" means the right to:

18 (i) Enter any long term care facility or assisted  
19 living or shared housing establishment or supportive  
20 living facility;

21 (ii) Communicate privately and without restriction  
22 with any resident, regardless of age, who consents to  
23 the communication;

24 (iii) Seek consent to communicate privately and  
25 without restriction with any participant or resident,  
26 regardless of age;

1 (iv) Inspect the clinical and other records of a  
2 participant or resident, regardless of age, with the  
3 express written consent of the participant or  
4 resident;

5 (v) Observe all areas of the long term care  
6 facility or supportive living facilities, assisted  
7 living or shared housing establishment except the  
8 living area of any resident who protests the  
9 observation; and

10 (vi) Subject to permission of the participant or  
11 resident requesting services or his or her  
12 representative, enter a home or community-based  
13 setting.

14 (2) "Long Term Care Facility" means (i) any facility as  
15 defined by Section 1-113 of the Nursing Home Care Act, as  
16 now or hereafter amended; (ii) any skilled nursing facility  
17 or a nursing facility which meets the requirements of  
18 Section 1819(a), (b), (c), and (d) or Section 1919(a), (b),  
19 (c), and (d) of the Social Security Act, as now or  
20 hereafter amended (42 U.S.C. 1395i-3(a), (b), (c), and (d)  
21 and 42 U.S.C. 1396r(a), (b), (c), and (d)); (iii) any  
22 facility as defined by Section 1-113 of the ID/DD Community  
23 Care Act, as now or hereafter amended; ~~and~~ (iv) any  
24 facility as defined by Section 1-113 of MC/DD Act, as now  
25 or hereafter amended; and (v) any facility licensed under  
26 Section 4-105 or 4-201 of the Specialized Mental Health

1           Rehabilitation Act of 2013, as now or hereafter amended.

2           (2.5) "Assisted living establishment" and "shared  
3 housing establishment" have the meanings given those terms  
4 in Section 10 of the Assisted Living and Shared Housing  
5 Act.

6           (2.7) "Supportive living facility" means a facility  
7 established under Section 5-5.01a of the Illinois Public  
8 Aid Code.

9           (2.8) "Community-based setting" means any place of  
10 abode other than an individual's private home.

11           (3) "State Long Term Care Ombudsman" means any person  
12 employed by the Department to fulfill the requirements of  
13 the Office of State Long Term Care Ombudsman as required  
14 under the Older Americans Act of 1965, as now or hereafter  
15 amended, and Departmental policy.

16           (3.1) "Ombudsman" means any designated representative  
17 of the State Long Term Care Ombudsman Program; provided  
18 that the representative, whether he is paid for or  
19 volunteers his ombudsman services, shall be qualified and  
20 designated by the Office to perform the duties of an  
21 ombudsman as specified by the Department in rules and in  
22 accordance with the provisions of the Older Americans Act  
23 of 1965, as now or hereafter amended.

24           (4) "Participant" means an older person aged 60 or over  
25 or an adult with a disability aged 18 through 59 who is  
26 eligible for services under any of the following:

1           (i) A medical assistance waiver administered by  
2           the State.

3           (ii) A managed care organization providing care  
4           coordination and other services to seniors and persons  
5           with disabilities.

6           (5) "Resident" means an older person aged 60 or over or  
7           an adult with a disability aged 18 through 59 who resides  
8           in a long-term care facility.

9           (c) Ombudsman; rules. The Office of State Long Term Care  
10          Ombudsman shall be composed of at least one full-time ombudsman  
11          and shall include a system of designated regional long term  
12          care ombudsman programs. Each regional program shall be  
13          designated by the State Long Term Care Ombudsman as a  
14          subdivision of the Office and any representative of a regional  
15          program shall be treated as a representative of the Office.

16          The Department, in consultation with the Office, shall  
17          promulgate administrative rules in accordance with the  
18          provisions of the Older Americans Act of 1965, as now or  
19          hereafter amended, to establish the responsibilities of the  
20          Department and the Office of State Long Term Care Ombudsman and  
21          the designated regional Ombudsman programs. The administrative  
22          rules shall include the responsibility of the Office and  
23          designated regional programs to investigate and resolve  
24          complaints made by or on behalf of residents of long term care  
25          facilities, supportive living facilities, and assisted living  
26          and shared housing establishments, and participants residing

1 in their own homes or community-based settings, including the  
2 option to serve residents and participants under the age of 60,  
3 relating to actions, inaction, or decisions of providers, or  
4 their representatives, of such facilities and establishments,  
5 of public agencies, or of social services agencies, which may  
6 adversely affect the health, safety, welfare, or rights of such  
7 residents and participants. The Office and designated regional  
8 programs may represent all residents and participants, but are  
9 not required by this Act to represent persons under 60 years of  
10 age, except to the extent required by federal law. When  
11 necessary and appropriate, representatives of the Office shall  
12 refer complaints to the appropriate regulatory State agency.  
13 The Department, in consultation with the Office, shall  
14 cooperate with the Department of Human Services and other State  
15 agencies in providing information and training to designated  
16 regional long term care ombudsman programs about the  
17 appropriate assessment and treatment (including information  
18 about appropriate supportive services, treatment options, and  
19 assessment of rehabilitation potential) of the participants  
20 they serve.

21 The State Long Term Care Ombudsman and all other ombudsmen,  
22 as defined in paragraph (3.1) of subsection (b) must submit to  
23 background checks under the Health Care Worker Background Check  
24 Act and receive training, as prescribed by the Illinois  
25 Department on Aging, before visiting facilities, private  
26 homes, or community-based settings. The training must include

1 information specific to assisted living establishments,  
2 supportive living facilities, shared housing establishments,  
3 private homes, and community-based settings and to the rights  
4 of residents and participants guaranteed under the  
5 corresponding Acts and administrative rules.

6 (c-5) Consumer Choice Information Reports. The Office  
7 shall:

8 (1) In collaboration with the Attorney General, create  
9 a Consumer Choice Information Report form to be completed  
10 by all licensed long term care facilities to aid  
11 Illinoisans and their families in making informed choices  
12 about long term care. The Office shall create a Consumer  
13 Choice Information Report for each type of licensed long  
14 term care facility. The Office shall collaborate with the  
15 Attorney General and the Department of Human Services to  
16 create a Consumer Choice Information Report form for  
17 facilities licensed under the ID/DD Community Care Act or  
18 the MC/DD Act.

19 (2) Develop a database of Consumer Choice Information  
20 Reports completed by licensed long term care facilities  
21 that includes information in the following consumer  
22 categories:

23 (A) Medical Care, Services, and Treatment.

24 (B) Special Services and Amenities.

25 (C) Staffing.

26 (D) Facility Statistics and Resident Demographics.

1 (E) Ownership and Administration.

2 (F) Safety and Security.

3 (G) Meals and Nutrition.

4 (H) Rooms, Furnishings, and Equipment.

5 (I) Family, Volunteer, and Visitation Provisions.

6 (3) Make this information accessible to the public,  
7 including on the Internet by means of a hyperlink labeled  
8 "Resident's Right to Know" on the Office's World Wide Web  
9 home page. Information about facilities licensed under the  
10 ID/DD Community Care Act or the MC/DD Act shall be made  
11 accessible to the public by the Department of Human  
12 Services, including on the Internet by means of a hyperlink  
13 labeled "Resident's and Families' Right to Know" on the  
14 Department of Human Services' "For Customers" website.

15 (4) Have the authority, with the Attorney General, to  
16 verify that information provided by a facility is accurate.

17 (5) Request a new report from any licensed facility  
18 whenever it deems necessary.

19 (6) Include in the Office's Consumer Choice  
20 Information Report for each type of licensed long term care  
21 facility additional information on each licensed long term  
22 care facility in the State of Illinois, including  
23 information regarding each facility's compliance with the  
24 relevant State and federal statutes, rules, and standards;  
25 customer satisfaction surveys; and information generated  
26 from quality measures developed by the Centers for Medicare

1 and Medicaid Services.

2 (d) Access and visitation rights.

3 (1) In accordance with subparagraphs (A) and (E) of  
4 paragraph (3) of subsection (c) of Section 1819 and  
5 subparagraphs (A) and (E) of paragraph (3) of subsection  
6 (c) of Section 1919 of the Social Security Act, as now or  
7 hereafter amended (42 U.S.C. 1395i-3 (c) (3) (A) and (E) and  
8 42 U.S.C. 1396r (c) (3) (A) and (E)), and Section 712 of the  
9 Older Americans Act of 1965, as now or hereafter amended  
10 (42 U.S.C. 3058f), a long term care facility, supportive  
11 living facility, assisted living establishment, and shared  
12 housing establishment must:

13 (i) permit immediate access to any resident,  
14 regardless of age, by a designated ombudsman;

15 (ii) permit representatives of the Office, with  
16 the permission of the resident's legal representative  
17 or legal guardian, to examine a resident's clinical and  
18 other records, regardless of the age of the resident,  
19 and if a resident is unable to consent to such review,  
20 and has no legal guardian, permit representatives of  
21 the Office appropriate access, as defined by the  
22 Department, in consultation with the Office, in  
23 administrative rules, to the resident's records; and

24 (iii) permit a representative of the Program to  
25 communicate privately and without restriction with any  
26 participant who consents to the communication

1           regardless of the consent of, or withholding of consent  
2           by, a legal guardian or an agent named in a power of  
3           attorney executed by the participant.

4           (2) Each long term care facility, supportive living  
5           facility, assisted living establishment, and shared  
6           housing establishment shall display, in multiple,  
7           conspicuous public places within the facility accessible  
8           to both visitors and residents and in an easily readable  
9           format, the address and phone number of the Office of the  
10          Long Term Care Ombudsman, in a manner prescribed by the  
11          Office.

12          (e) Immunity. An ombudsman or any representative of the  
13          Office participating in the good faith performance of his or  
14          her official duties shall have immunity from any liability  
15          (civil, criminal or otherwise) in any proceedings (civil,  
16          criminal or otherwise) brought as a consequence of the  
17          performance of his official duties.

18          (f) Business offenses.

19                (1) No person shall:

20                   (i) Intentionally prevent, interfere with, or  
21                   attempt to impede in any way any representative of the  
22                   Office in the performance of his official duties under  
23                   this Act and the Older Americans Act of 1965; or

24                   (ii) Intentionally retaliate, discriminate  
25                   against, or effect reprisals against any long term care  
26                   facility resident or employee for contacting or

1 providing information to any representative of the  
2 Office.

3 (2) A violation of this Section is a business offense,  
4 punishable by a fine not to exceed \$501.

5 (3) The State Long Term Care Ombudsman shall notify the  
6 State's Attorney of the county in which the long term care  
7 facility, supportive living facility, or assisted living  
8 or shared housing establishment is located, or the Attorney  
9 General, of any violations of this Section.

10 (g) Confidentiality of records and identities. The  
11 Department shall establish procedures for the disclosure by the  
12 State Ombudsman or the regional ombudsmen entities of files  
13 maintained by the program. The procedures shall provide that  
14 the files and records may be disclosed only at the discretion  
15 of the State Long Term Care Ombudsman or the person designated  
16 by the State Ombudsman to disclose the files and records, and  
17 the procedures shall prohibit the disclosure of the identity of  
18 any complainant, resident, participant, witness, or employee  
19 of a long term care provider unless:

20 (1) the complainant, resident, participant, witness,  
21 or employee of a long term care provider or his or her  
22 legal representative consents to the disclosure and the  
23 consent is in writing;

24 (2) the complainant, resident, participant, witness,  
25 or employee of a long term care provider gives consent  
26 orally; and the consent is documented contemporaneously in

1 writing in accordance with such requirements as the  
2 Department shall establish; or

3 (3) the disclosure is required by court order.

4 (h) Legal representation. The Attorney General shall  
5 provide legal representation to any representative of the  
6 Office against whom suit or other legal action is brought in  
7 connection with the performance of the representative's  
8 official duties, in accordance with the State Employee  
9 Indemnification Act.

10 (i) Treatment by prayer and spiritual means. Nothing in  
11 this Act shall be construed to authorize or require the medical  
12 supervision, regulation or control of remedial care or  
13 treatment of any resident in a long term care facility operated  
14 exclusively by and for members or adherents of any church or  
15 religious denomination the tenets and practices of which  
16 include reliance solely upon spiritual means through prayer for  
17 healing.

18 (j) The Long Term Care Ombudsman Fund is created as a  
19 special fund in the State treasury to receive moneys for the  
20 express purposes of this Section. All interest earned on moneys  
21 in the fund shall be credited to the fund. Moneys contained in  
22 the fund shall be used to support the purposes of this Section.

23 (k) Each Regional Ombudsman may, in accordance with rules  
24 promulgated by the Office, establish a multi-disciplinary team  
25 to act in an advisory role for the purpose of providing  
26 professional knowledge and expertise in handling complex

1 abuse, neglect, and advocacy issues involving participants.  
2 Each multi-disciplinary team may consist of one or more  
3 volunteer representatives from any combination of at least 7  
4 members from the following professions: banking or finance;  
5 disability care; health care; pharmacology; law; law  
6 enforcement; emergency responder; mental health care; clergy;  
7 coroner or medical examiner; substance abuse; domestic  
8 violence; sexual assault; or other related fields. To support  
9 multi-disciplinary teams in this role, law enforcement  
10 agencies and coroners or medical examiners shall supply records  
11 as may be requested in particular cases. The Regional  
12 Ombudsman, or his or her designee, of the area in which the  
13 multi-disciplinary team is created shall be the facilitator of  
14 the multi-disciplinary team.

15 (Source: P.A. 98-380, eff. 8-16-13; 98-989, eff. 1-1-15;  
16 99-180, eff. 7-29-15.)

17 Section 10. The Specialized Mental Health Rehabilitation  
18 Act of 2013 is amended by changing Sections 4-103, 4-105, and  
19 4-201 as follows:

20 (210 ILCS 49/4-103)

21 Sec. 4-103. Provisional licensure emergency rules. The  
22 Department, in consultation with the Division of Mental Health  
23 of the Department of Human Services and the Department of  
24 Healthcare and Family Services, is granted the authority under

1 this Act to establish provisional licensure and licensing  
2 procedures by emergency rule. The Department shall file  
3 emergency rules concerning provisional licensure under this  
4 Act within 120 days after the effective date of this Act. ~~The~~  
5 ~~rules to be filed for provisional licensure shall be for a~~  
6 ~~period of 3 years, beginning with the adoption date of the~~  
7 ~~emergency rules establishing the provisional license, and~~  
8 ~~shall not be extended beyond the date of 3 years after the~~  
9 ~~effective date of the emergency rules creating the provisional~~  
10 ~~license and licensing process.~~ Rules governing the provisional  
11 license and licensing process shall contain rules for the  
12 different levels of care offered by the facilities authorized  
13 under this Act and shall address each type of care hereafter  
14 enumerated:

15 (1) triage centers;

16 (2) crisis stabilization;

17 (3) recovery and rehabilitation supports;

18 (4) transitional living units; or

19 (5) other intensive treatment and stabilization  
20 programs designed and developed in collaboration with the  
21 Department.

22 (Source: P.A. 98-104, eff. 7-22-13.)

23 (210 ILCS 49/4-105)

24 Sec. 4-105. Provisional licensure duration. A provisional  
25 license shall be valid upon fulfilling the requirements

1 established by the Department by emergency rule. The license  
2 shall remain valid as long as a facility remains in compliance  
3 with the licensure provisions established in rule. Provisional  
4 licenses issued upon initial licensure as a specialized mental  
5 health rehabilitation facility shall expire at the end of a  
6 3-year period, which commences on the date the provisional  
7 license is issued. Issuance of a provisional license for any  
8 reason other than initial licensure (including, but not limited  
9 to, change of ownership, location, number of beds, or services)  
10 shall not extend the maximum 3-year period, at the end of which  
11 a facility must be licensed pursuant to Section 4-201. The  
12 ~~provisional license shall expire when the administrative rule~~  
13 ~~established by the Department for provisional licensure~~  
14 ~~expires at the end of a 3 year period.~~

15 (Source: P.A. 98-104, eff. 7-22-13.)

16 (210 ILCS 49/4-201)

17 Sec. 4-201. Accreditation and licensure. At the end of the  
18 provisional licensure period established in ~~Article 3,~~ Part 1  
19 of this Article 4 Act, the Department shall license a facility  
20 as a specialized mental health rehabilitation facility under  
21 this Act that successfully completes and obtains valid national  
22 accreditation in behavioral health from a recognized national  
23 accreditation entity and complies with licensure standards as  
24 established by the Department of Public Health in  
25 administrative rule. Rules governing licensure standards shall

1 include, but not be limited to, appropriate fines and sanctions  
2 associated with violations of laws or regulations. The  
3 following shall be considered to be valid national  
4 accreditation in behavioral health from an national  
5 accreditation entity:

6 (1) the Joint Commission;

7 (2) the Commission on Accreditation of Rehabilitation  
8 Facilities;

9 (3) the Healthcare Facilities Accreditation Program;

10 or

11 (4) any other national standards of care as approved by  
12 the Department.

13 (Source: P.A. 98-104, eff. 7-22-13.)

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law."